

CRIMINAL APPEAL No.345 OF 1993

Against the judgment and order of conviction and sentence dated 30.9.1993 passed by Sri N.N. Singh, 2nd Additional District & Sessions Judge, Jamui in Sessions Trial Case No. 423 of 1991 arising out of Laxmipur P.S. Case No. 17 of 1991.

MASOODI YADAV, SON OF MISHRI YADAV, RESIDENT OF VILLAGE- KHIR BHOJANA, POLICE STATION- LAXMIPUR, DISTRICT- JAMUI ----- Appellant

Versus

THE STATE OF BIHAR ----- Respondent

For the appellant :- Mr. Rajendra Nath Jha, Amicus Curiae

For the State :- Mr. S. N. Prasad, Advocate

P R E S E N T

THE HON'BLE JUSTICE SMT. SHEEMA ALI KHAN

S.A. Khan, J.

Mr. R. N. Jha is appearing Amicus Curiae in this case.

The sole appellant has challenged the order passed by 2nd Additional District & Sessions Judge, Jamui in Sessions Trial No. 423 of 1991 by which he has been convicted under Section 395 of the Indian Penal Code to undergo R.I. for ten years.

The prosecution case in short is that on 10.2.1991 at about 7 p.m. Narsing Saw

(P.W. 4) of village Jogia was sitting in the verandah of his house when it is alleged that 5 to 10 persons entered his house assaulted him, his wife and his daughter-in-law and committed dacoity. Thereafter it is alleged that at about 9 p.m. again in the village Nazri dacoity was committed in the house of Niru Rabidas. The dacoits were said to be armed with knife, guns, bombs etc. and it is alleged that they took away house hold articles and ornaments and Rs. 4,000-5,000/- cash. The prosecution case further is that some persons of village Nazri chased and caught a person who is said to have disclosed his name as Masoodi Yadav (appellant) who was handed over to the police by the villagers.

The Trial Court has approached the case from two angles. Firstly the Trial Court has considered whether dacoity took place as alleged in the First Information Report and secondly whether this appellant was involved in the said occurrence. The Trial Court has discussed the evidence of several persons including the daughter-in-law and the informant Narsing Saw P.W. 4 and evidence of Niru Rabidas

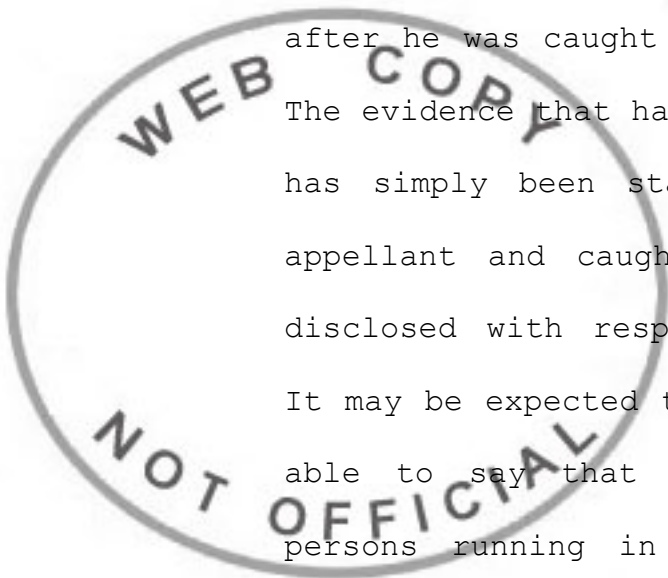
the person in whose house the second part of the occurrence took place who also alleges that dacoity was committed. The facts which emerges after considering the deposition of witnesses is that when the dacoits entered the house of Narsing Saw P.W. 4 situated in Tola Jogia, village- Nazri at 7 p.m. committed dacoity, Narsing Saw P.W. 4 took no steps to inform the police, his neighbours or the villagers. Narsing Saw the informant remained quietly in his house after the dacoity. This fact is very relevant in the context that the occurrence is said to have taken place at 7 p.m. Even in the village, 7 p.m. is not a time when all the villagers are asleep and no one would notice that some 10 to 15 strangers have entered the village. It was only when the villagers caught hold of this appellant and produced him before Narsing Saw that he admitted that a dacoity had taken place at about 7 p.m. in his house.

Similarly Niru Rabidas P.W. 2 was sleeping in his house when the dacoity is said to have taken place. His version of the occurrence is that 15-20 dacoits entered his house, took away house hold articles and

ornaments and thereafter left the house. This witness did not raise hue and cry after the occurrence took place. In fact at paragraph 5 he has stated that when he heard a commotion in the village, he went outside his house and saw that the villagers had caught hold of the appellant and produced the appellant before him alleging that he was one of the dacoits who was fleeing away. Although the occurrence took place in the late part of the evening and not a single person of the village including Niru Rabidas himself raised a hue and cry. The question therefore, which arises is what led the villagers to chase or to catch hold of Masoodi Yadav. There is absolutely no explanation given by the witnesses as to what inspired them to chase Masoodi Yadav as after the occurrence no one had raised a protest or sound to indicate that the dacoity had taken place. Therefore, this Court finds that the evidence of P.Ws. 2 and 7 does not inspire the confidence of the Court and it becomes doubtful that a occurrence of such a nature took place.

The second aspect that arises in this appeal is that P.Ws. 7, 11, 13 and 15 have

deposed the Court that they have chased the appellant, caught hold of him and produced him before Narsing Saw P.W. 4 and Niru Rabidas P.W. 2 who subsequently identified this appellant as being one of the dacoits. Some of these witnesses i.e. P.Ws. 7, 11, 13 and 15 including the informant know the appellant very well. P.W. 4 Narsing Saw claims that the appellant is his neighbour and is well known to him, P.W. 7 claims that he knows him since he has attained "hosh" whereas P.Ws. 11 and 13 claim that they only came to know and identify the appellant after he was caught on chase by the villagers. The evidence that has come on record is that it has simply been stated that they chased the appellant and caught him. Nothing has been disclosed with respect to the other dacoits. It may be expected that the witnesses could be able to say that they saw about 10 or 15 persons running in the village in different directions and after chase they were only able to catch one person. The tenure of the evidence suggests that only one person was caught and the witnesses are completely silent regarding the other miscreants who would



obviously be present at the time when the chase was being made. Surprisingly when the appellant was caught nothing was recovered from his possession much less any weapon which would indicate that he was a part of a gang of dacoits. The evidence of the witnesses who have allegedly caught the appellant is unreliable for the reason that there are several contradictions regarding the manner of occurrence. For example P.W. 7 has stated that he heard "hulla" in the village of Narsing Saw regarding the commotion of dacoity which is contrary to the version disclosed by the informant or any other witness. P.W. 11 further states that he lives 25 yards from the house of Narsing Saw and the village where the occurrence took place is 2 kms. from the Tola Jogia which leads this Court to think that the story of chase as revealed as P.W. 7 cannot be given any credence. P.W. 11 claims that he arrived at the spot after the appellant was caught by the villagers. P.W. 13 states that Aaso Ravidas caught hold of the appellant first whereas P.W. 7 claims that he have caught hold of the appellant. In this manner,

contradictions regarding the versions given by the witnesses with respect to how the appellant was chased and apprehended indicates that the witnesses are not telling the truth regarding this aspect of the prosecution version.

A specific defence has been taken on behalf of the appellant that he was going for attend Puja in a village nearby and in the mean time he had been caught by the villagers on suspicion. This aspect of the defence was suggested to all the witnesses who have denied it, however, in order to support his defence the appellant has produced one witness Sugia Devi. Sugia Devi claims that there was a Puja in her house because she had built a new house and 9 persons had been invited for singling Bhajans in the night. The appellant was amongst those 9 persons. The Court has disbelieved the evidence because she has not stated this aspect before the Investigating Officer. Nevertheless it does appear an explanation for going to the village Khir Yojna for the purpose of singing Bhajans in the night has been disclosed by the appellant.

On consideration of all aspects of this case, this Court finds that the prosecution has not been able to prove its case beyond reasonable doubt and, therefore, acquits the appellant by giving him the benefit of doubt. The appeal is allowed. The appellant is discharged from the liabilities of his bail bond.

Patna High Court,
5th May, 2009
N.A.F.R./Sanjay

(Sheema Ali Khan, J.)

